

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A.P. and A.P., Minors.

FAMILY INDEPENDEN AGENCY,

Petitioner-Appellee,

v

MICHAEL ALLAN PELTON,

Respondent-Appellant,

and

SUSAN WALKER,

Respondent.

In the Matter of E.L.W., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBERT L. WALKER,

Respondent-Appellant,

and

SUSAN WALKER,

Respondent.

UNPUBLISHED

April 19, 2002

No. 236090

Tuscola Circuit Court

Family Division

LC No. 99-007381-NA

No. 236159

Tuscola Circuit Court

Family Division

LC No. 99-007381-NA

In the Matter of E.L.W., A.M.P, and A.S.P.,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SUSAN WALKER,

Respondent-Appellant,

and

MICHAEL ALLAN PELTON and ROBERT
LLOYD WALKER, JR.,

Respondents.

Before: Cooper, P.J., and Hood and Kelly, JJ.

PER CURIAM.

Respondents Michael Pelton, Robert Walker, and Susan Walker each appeal as of right from the trial court's order terminating their parental rights to the minor children. Respondent Pelton's parental rights were terminated under MCL 712A.19b(3)(g), respondent Robert Walker's parental rights were terminated under MCL 712A.19b(3)(b)(i) and (h), and respondent Susan Walker's parental rights were terminated under MCL 712A.19b(3)(b)(ii) and (g). We affirm.

On August 26, 1999, a petition for temporary custody was filed alleging that the minor children were within the trial court's jurisdiction due to the neglect or refusal of a parent or other legally responsible person to provide for their health and morals or establish an appropriate place for the children to live. The petition further states that Respondent Robert Walker abused both of his stepchildren. According to the petition, Robert Walker broke A.P.'s arm and gave him a black eye. The petition also alleges that A.P. suffered two broken arms because Robert Walker pushed her down a flight of stairs. A supplemental petition maintained that Robert Walker was incarcerated and could not currently care for his children. Robert Walker pleaded no contest to that portion of the supplemental petition.¹ Susan Walker also pleaded no contest to the petition,

¹ At the time of his plea, Robert Walker was facing criminal charges and was in jail. Robert Walker later pleaded no contest to second-degree child abuse, MCL 750.136b(3), and on
(continued...)

except for the allegation that she was unwilling to assist in the investigation of the injuries to her children. Michael Pelton pleaded no contest to the petition on the grounds that he was unaware of the abuse and that the children were living with Susan Walker. A petition to terminate the parental rights of respondents was filed on August 16, 2000.

Docket No. 236090

Respondent Michael Pelton is the biological father of A.P. and A.P. On appeal, Pelton argues that the trial court erred in accepting his no contest plea to the initial petition. Specifically, Pelton claims that the court failed to properly advise him of the consequences of his plea and also failed to ensure that the plea was knowingly and voluntarily given. As a result of these alleged defects, respondent asserts that the court's jurisdiction over the children was not properly established under MCL 712A.2(b)(1). Therefore, respondent opines that the proceedings should be rendered void and the order terminating his parental rights vacated. However, Pelton did not timely appeal the trial court's jurisdictional order or otherwise contest its jurisdictional decision through a motion for rehearing below. See *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993); *In Re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). Consequently, Pelton may not now collaterally challenge the trial court's jurisdiction on appeal.

Pelton also argues that the trial court clearly erred in determining that § 19b(3)(g)² was established by clear and convincing evidence. We disagree.

The record establishes that Pelton has a history of alcoholism and that despite several attempts to maintain sobriety, he has been unable to overcome this problem. The evidence shows that his frequent relapses and treatment attempts have disrupted his visitation, his ability to obtain stable employment and housing, and his ability to participate and follow through with services. Although Pelton claimed that he was sober during the six months preceding the termination hearing, the first three months were spent in jail because of an alcohol-related offense. Pelton also admitted that he failed to participate in or complete several of the programs that were required as conditions of his release from jail.

Furthermore, the record does not support Pelton's claim that petitioner failed to provide him with reasonable assistance and services. Indeed, several witnesses testified about their attempts to provide services to Pelton. While Pelton seemed to respond well initially to these services, the witnesses testified that he failed to keep appointments or follow through with the services provided. Nevertheless, the witnesses testified that parenting and related services were secondary considerations to controlling Pelton's continuing alcohol problem.

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May 26, 2000, was sentenced to ten to fifteen years' imprisonment.

² Subsection 19b(3)(g) provides that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Therefore, we find that the trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 352-353; 612 NW2d 407 (2000); *In re Sours*; 459 Mich 624, 633; 593 NW2d 520 (1999).

Docket No. 236159

Respondent Robert Walker is the biological father of E.L.W. and the stepfather of A.P. and A.P. On appeal, Robert Walker claims that the trial court erred in finding sufficient evidence to terminate his parental rights to his child. We disagree.

Initially, we reject Robert Walker's contention that the trial court agreed to limit the evidence against him to the mere fact of his incarceration and imprisonment. Rather, the record reveals that the trial court admitted the children's case files into evidence with the understanding that it would consider the portions of the files that were relevant to each party. Thus, although the trial court granted Robert Walker's motion to limit the use of his judgment of sentence, the trial court was not precluded from considering the information within the case files.

After a careful review of the record, we conclude that the trial court did not clearly err in finding that § 19b(3)(h)³ was established by clear and convincing evidence. The evidence showed that Robert Walker was serving a ten to fifteen year prison sentence for child abuse involving one of the stepchildren. Although the abuse did not involve Robert Walker's own child, the abusive environment supports the trial court's finding that Robert Walker failed to provide proper care and custody for his own child prior to his incarceration. *In re Powers, supra* at 592-593; *In re Dittrick*, 80 Mich App 219, 222; 263 NW2d 37 (1977). Additionally, the record does not support Robert Walker's claim that he provided, or was going to provide, for the proper care and custody of his child during his incarceration. Indeed, Robert Walker pleaded no contest to the allegation in the supplemental petition that he was in jail, unable to post bond, and that as a result he was unable to care for his child. Furthermore, it is unlikely that Robert Walker could provide his child with a "normal home," given the evidence of abuse. See *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999). Thus, the trial court did not err in terminating respondent Robert Walker's parental rights to his child under § 19b(3)(h).⁴

³ Subsection 19b(3)(h) provides that "[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

⁴ Because we find no clear error in the trial court's decision to terminate Robert Walker's parental rights under § 19b(3)(h), we decline to address the independent ground for termination under § 19b(3)(b)(i). *In re Trejo, supra*.

Docket No. 237426

Respondent Susan Walker is the biological mother of the minor children in this case. On appeal, Susan Walker argues that the trial court clearly erred in finding that § 19b(3)(g)⁵ was established by clear and convincing evidence. We disagree.

The evidence indicates that Susan Walker moved numerous times during the pendency of these proceedings and that at one point her living arrangements included a registered sex offender.⁶ Moreover, Susan Walker also held numerous jobs throughout the proceedings. The trial court's finding that Susan Walker maintained a "nomadic lifestyle" is supported by the record. The evidence also indicated that Susan Walker had problems with denial and dependence, involving her in unsuitable and abusive relationships. Therefore, the trial court properly determined that Susan Walker's nomadic lifestyle and the absence of other parental skills would significantly hinder her ability to provide proper stability for her children and their special needs. Accordingly, the trial court did not err in terminating Susan Walker's parental rights under § 19b(3)(g).⁷

Affirmed.

/s/ Jessica R. Cooper
/s/ Harold Hood
/s/ Kirsten Frank Kelly

⁵ See footnote one.

⁶ Although respondent testified that she was unaware of her roommate's dangerous background, she also testified that she did not know she would be residing with two men. Susan Walker later admitted that the other man was her current boyfriend.

⁷ Because we have found no clear error in the trial court's finding of sufficient evidence to terminate Susan Walker's parental rights under § 19b(3)(g), we decline to consider her remaining claim of error as it relates to the alternate termination of her parental rights under § 19b(3)(b)(ii). *In re Trejo, supra*.